

MAY 29 2012

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United States District Court
Western District of Virginia
Harrisonburg Division

SHARON WHITNEY,
also known as
Sharon R. Breighner

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant,

Civil No.: 5:11cv00118

**REPORT AND
RECOMENDATION**

By: Hon. James G. Welsh
U. S. Magistrate Judge

Sharon Whitney brings this civil action challenging a final decision of the Commissioner of the Social Security Administration ("the agency") denying her application for a period of disability and disability insurance benefits ("DIB") under Title II and for Supplemental Security Income ("SSI") under Title XVI of the Social Security Act, as amended ("the Act"), 42 U.S.C. §§ 416 and 423 and 42 U.S.C. §§ 1381 *et seq.*, respectively. Jurisdiction of the court is pursuant to 42 U.S.C. § 405(g).

The record shows that the plaintiff protectively filed her application on June 2, 2009, alleging disability beginning June 1, 2007. (R.17). Her claims were denied both initially and on state agency reconsideration (R.51, 57). Following an administrative hearing (R.32-46), the presiding administrative law judge ("ALJ") issued an unfavorable decision (R. 14) on January 28, 2011. The Appeals Council granted her request for review and found that plaintiff was not under a disability, as defined by the Act, at any time from June 1, 2007 through the date of

decision, September 26, 2011. *See* 20 C.F.R. 404.1520(f) and 416.920(f). The unfavorable written decision of the Appeals Council now stands as the Commissioner's final decision.

The plaintiff filed her Complaint in this court on October, 26, 2011. (Docket #2). On January 9, 2012, the plaintiff was sent a letter informing her that her attorney had passed away; a letter was also faxed to attorney Lane's office. (Docket #7). On February 8, 2012, plaintiff was sent an order to secure substitute counsel. (Docket #8). No response was received. On March 1, 2012, the Commissioner filed his Answer along with a certified copy of the Administrative Record. (Docket #9). Plaintiff's brief was due April 1, 2012, but was never received. On May 14, 2012, this court issued a notice to dismiss for failure to prosecute; a show cause response was due by May 23, 2012. (Docket # 14). No response was received.

I. Recommended Disposition

On the basis of plaintiff's failure to seasonably prosecute, it is RECOMMENDED that an order be entered AFFIRMING the final decision of the Commissioner, GRANTING JUDGMENT to the defendant, and DISMISSING this case from the docket of the court.

The clerk is directed to transmit the record in this case immediately to the presiding United States district judge and to transmit a copy of this Report and Recommendation to all counsel of record.

II. Notice to the Parties

Both sides are reminded that pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, they are entitled to note objections, if any they may have, to this Report and Recommendation within fourteen (14) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned to which an objection is not specifically made within the period prescribed by law may become conclusive upon the parties. Failure to file specific

objections pursuant to 28 U.S.C. § 636(b)(1) as to factual recitals or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objections.

DATED: this 29th day of May 2012.

s/ *James G. Welsh*
United States Magistrate Judge